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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 480

VICTOR H. MULLING, Junior Judge, etc.,
Petitioner,

vs.

J. P. HOULIHAN, R. W. CUBBEDGE, A. W. SOLOMON, H. L. FULTON, JR., and ROGER WOOD as Commissioners of Chatham County, Georgia, and Ex-officio Judges Thereof of Chatham County, Georgia; B. B. HEEBY, Chief Judge and COLUMBUS ALEXANDER, Senior Judge of the Municipal Court of Savannah, R. E. ARMSTRONG, ET AL., Intervenors,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA AND BRIEF IN SUPPORT THEREOF.

Victor H. Mulling,
Pro se.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 480

VICTOR H. MULLING, JUNIOR JUDGE, ETC.,
Petitioner,

vs.

J. P. HOULIHAN, E. W. CUBBEDGE, A. W. SOLOMON, H. L. FULTON, JR., AND ROGER WOOD AS COMMISSIONERS OF CHATHAM COUNTY, GEORGIA, AND EX-OFFICIO JUDGES THEREOF OF CHATHAM COUNTY, GEORGIA; B. B. HEERY, CHIEF JUDGE AND COLUMBUS ALEXANDER, SENIOR JUDGE OF THE MUNICIPAL COURT OF SAVANNAH, R. E. ARMSTRONG, ET AL., INTERVENORS,
Defendants

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

This is a petition for a writ of certiorari to the Supreme Court of the State of Georgia, to review a decision of the Supreme Court of Georgia, dated September 13, 1949, affirm-

ing a final judgment of the Superior Court of Chatham County, Georgia, which had ruled adversely to the contentions of petitioner in a suit for declaratory judgment brought by J. P. Houlihan, et al., Commissioners of Chatham County, Georgia, against B. B. Heery, Chief Judge; Columbus Alexander, Senior Judge, and your petitioner as Junior Judge of the Municipal Court of Savannah.

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Summary Statement of Matter Involved

Petitioner contends that a local law approved February 9, 1949, passed by the State of Georgia referring to the Municipal Court of Savannah, violates the Fourteenth Amendment to the Constitution of the United States as discriminating against petitioner in that said law attempts to change the salaries paid to the Judges of said Court and fix the amount paid to petitioner as one associate judge of this Court at a sum of five hundred dollars annually less than that paid to the other associate judge of the court whose office, work, duties, qualifications and responsibilities under the laws relating to the court are identical with those of petitioner.

This case originated in the Superior Court of Chatham County (the highest *nisi prius* court in Georgia), on the petition of the Commissioners of said County, asking that the Court construe and determine the constitutionality of the local law referred to, changing and increasing the rate of pay of the three judges of the Municipal Court of Savannah.

From the establishment of the Court in 1916, there have been one chief judge and two associate judges of this Court and such was true at the time of the passage of the law under attack. The duties, powers, and responsibilities of the two associate judges, under all of the Acts referring to the

Court throughout its existence, have always been identical, and their salaries have always been the same, until the passage of the Act under review.

The complete law under review had one purpose: to increase the salaries of the three judges in service. Incidental to this purpose, it attempts to make an arbitrary and, petitioner contends, illegal distinction between the two associate judges; thereafter one was to be the senior judge and the other should be known as the junior judge. In the fourth section of the law, the senior judge is defined as the judge "having the longest service as such judge". Section five fixes the amount of salary that shall thereafter be paid to the senior judge and to the junior judge. Entirely in conflict with the criterion of length of service, section six of the law provides that seniority in service is not to be the test applied by the law to a person filling the vacancy in the office of senior judge, it providing that the person named for the unexpired term of senior judge shall be selected and appointed in a certain way and that this appointee shall be the senior judge. Thus seniority in service is not the test or standard by which the senior judge shall hold office in such a contingency. It is the obvious purpose of the law to eternally damn and doom petitioner and restrict his income and position to that provided for the junior judge so long as he may serve in this Court, even though he may in fact become "senior in service".

Sections 4, 5, and 6 of the law under attack read as follows:

> "Section IV. Be it further enacted by the General Assembly of the State of Georgia and it is hereby enacted by authority of the same that from and after the passage of this Act the existing associate judges of said Court shall be known as the senior judge and the junior judge. The senior judge of said Municipal Court of Savannah is hereby defined as the judge of

said Court having the longest term of service as such judge, and the junior judge of said Court is hereby defined as the judge having the lesser length of service as such judge.

"Section V. Be it further enacted by authority of the same that the salaries of said senior and said junior judges shall be as follows: The senior judge shall receive a salary of $5,000.00 per year, and the junior judge shall receive a salary of $4,500.00 per year. Said salaries shall be paid by the Commissioners of Chatham County and Ex-officio Judges thereof out of the county treasury on a monthly basis.

"Section VI. Be it further enacted by authority of the same that, in the event of the death or resignation of the Chief Judge of the Municipal Court of Savannah and Ex-officio Judge of the City Court of Savannah, his successor for the unexpired term shall be elected and appointed by the County Commissioners and Ex-officio Judges of Chatham County. In the event of the death or resignation of the Senior Judge of the Municipal Court of Savannah or the death or resignation of the Junior Judge of the Municipal Court of Savannah, his successor for his unexpired term shall likewise be elected and appointed by the County Commissioners and Ex-officio Judges of Chatham County."

Both of the associate judges mentioned in the Act had been elected by the people and were in office for specified terms as associate judges of said Court when the Act was approved February 9, 1949. Applicant for certiorari is the associate judge "having the lesser length of service as such judge."

In this petition, applicant limits his contention to the position that the law before the Court discriminates against him in that his salary is fixed at a rate of pay five hundred dollars less annually than that fixed by the Act for the other associate judge of the Court, and that no classification has been legally made in the law to justify such dis-

crimination. Applicant further contends that he has, in consequence, been denied the equal protection of the law.

Petitioner filed his answer or response in the original action in which he contended and urged, among other things, that the law before the Court is invalid and unconstitutional in that it violates the Fourteenth Amendment to the Constitution of the United States which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the law."

In his application, petitioner contends that this law fixing his salary as judge of the Court at a lesser sum than that paid to another judge of the same Court elected in the same way, serving the same period, requiring the same qualifications and discharging the same duties obviously is violative of the equal protection clause of the Constitution as referred to.

The trial court passed upon petitioner's contentions and overruled them. Upon appeal to the Supreme Court of Georgia, that Court refused to consider petitioner's contention as above stated, and held in the first head note of the decision that:

> "Injury must be shown by the application of the law before a person can attack its constitutionality . . . Discrimination in the grant of favors is not a denial of the equal protection of the law."

Petitioner contends that the foregoing principle has no application to the case under review. We contend that the salary paid for the discharge of the office is remuneration for the service rendered. The doctrine stated is fallacious and its application would thwart many persons in their efforts to obtain equal privileges or rights if this doctrine is accepted and approved by this Court as sound.

Petitioner contends that this decision by the Supreme Court of Georgia involves a federal question which is not in accord with the provision of the Fourteenth Amendment of the Constitution of the United States nor with the decisions of this Court referring to said provision. Petitioner contends that the decision referred to has a special and important bearing on the current problems which must now be cleared by this Court as to whether the equal protection clause can be evaded by a State by the simple device of fixing a basic salary, however small, as "remuneration", and then characterizing as "favors" any additional compensation, however great, paid to certain individuals, thus preventing this Court from enforcing the right of all people to equal compensation for equal work, whatever their race or color or circumstances.

We would also stress that this Act shows a tendency that should be quickly and completely destroyed, the effort of any person at any time to use the courts of the land as a place where political favoritism or discrimination can be practiced. Our courts should not be the pawns of the politicians so that one judge may be favored or another punished at their whim and fancy.

Petitioner contends that the fact of "seniority" as stated in the Act is not a legal classification. The following situation may occur, under the law under review. Should vacancies occur simultaneously in the office of the two associate judges of the court, the County Commissioners of Chatham County would fill the vacancies. The two new judges could be appointed at the same meeting and even in the same resolution. Then the first appointee to complete his oath of office would, under this law, be the judge senior in service and, therefore, would be the senior judge of the Court, although he might complete his oath only a split second ahead of his colleague. But on the other hand, should the present "junior judge" under the Act serve for

a period of forty or more years, upon a vacancy occuring in the office of senior judge of the court, the County Commissioners of Chatham County, under Section Six of the Act, would appoint a successor to fill the unexpired term of senior judge and such appointee would be the senior judge. It is obvious, therefore, without argument, that the classification, if we assume it to be such, is personal, arbitrary and without a reasonable distinction, and is, therefore, invalid. Such classification, petitioner contends, is invalid under the many decisions of this Court cited in the 12th Volume of "American Jurisprudence", dealing with "Constitutional Law" and set out in the paragraphs of that subject numbered 478, 481, 483, and 485.

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Reasons for Allowance for Writ

Petitioner appreciates the fact that the discrimination complained of by him in this case in dollars and cents is insignificant compared to the greater problems presented daily to this Honorable Court. Petitioner respectfully submits, however, that two questions, both of grave importance, are presented in this case.

The first of these is whether this Court should not promptly and completely destroy the formula or doctrine laid down in this case. Otherwise, it will be presented and used in a multitude of situations where there are discriminations made against people. This Court knows judicially that untiring efforts of many planners are being made in order to prevent the termination of discriminations that are being practiced in many ways. The formula or doctrine that a base pay can be augmented without reason or propriety is the solution of their problem from their standpoint. The doctrine of this case will be eagerly pounced upon by them and used by them to sustain this practice.

The second grave question or principle presented is, should this great Court sustain a law which clearly destroys the integrity of the small courts of our Country and the respect that our people should have for them.

The newspaper several months ago related in substance this story: During a session of one of the small trial courts in North Carolina, a distinguished spectator appeared and watched the proceedings to the end of the docket. His appearance created great interest. Upon being approached, it was determined that he was one of the great Justices of this great Court. He was asked by a newspaper reporter why he had taken the time to come there. His answer was that such courts as these, which directly touch the people and in which the people see justice dispensed, are the most important courts in our land; that our democracy would succeed and be upheld only if these courts succeed in their great work of dispensing justice in direct contact with the people.

Petitioner realizes that this petition has violated to some degree some portions of the rules relating to petitions for certiorari. He trusts that such infringements will be pardoned.

WHEREFORE, petitioner prays that the writ of certiorari be granted in this case as provided by law, and the judgments herein excepted to be reversed.

Dated: Savannah, Georgia, November 30, 1949.

VICTOR H. MULLING,
Petitioner, pro se.

GEORGIA,
Chatham County:

We, the undersigned attorneys of record for the defendants in certiorari in the foregoing petition, do hereby accept notice of the filing of the foregoing petition for certiorari in the Supreme Court of the United States; copies of the

foregoing petition have been received by us on behalf of our respective clients. All other notice or service of any nature regarding said application for certiorari is hereby waived.

This 2nd day of December, 1949.

JOHN J. BOUHAN,
Attorneys for J. P. Houlihan, et al., as Commissioners of Chatham County, Georgia,
P. O. Address: Commercial Building, Savannah, Georgia;

SPENCE M. GRAYSON,
OWEN J. PAGE,
Attorneys for B. B. Heery, Chief Judge and Columbus Alexander, Senior Judge, of Municipal Court of Savannah, Savannah, Georgia,
P. O. Address: Commercial Building, Savannah, Georgia;

ALBERT L. COBB,
Attorney for R. E. Armstrong, et al., Intervenors,
P. O. Address: 105 East Congress Street, Savannah, Georgia.